

Written Testimony from the U.S. Chamber Institute for Legal Reform on H.B. 6341
State of Connecticut General Assembly
Joint Committee on the Judiciary
March 4, 2011

The U.S. Chamber Institute for Legal Reform (“ILR”) hereby submits its comments in strong opposition to H.B. 6341, legislation aimed at repealing the State of Connecticut’s statute of repose for personal injury claims involving exposure to asbestos. ILR is a national organization that represents the nation’s business community in a critical mission – to make America’s legal system simpler, fairer and faster for all stakeholders. To that end, ILR is committed to ensuring that asbestos litigation is guided by well-settled legal principles.

H.B. 6341 would in one fell swoop eliminate the State of Connecticut’s longstanding statute of repose as applied specifically to asbestos personal injury claims. The current statute of repose for such claims is 60 years – a period of time that the Connecticut legislature previously deemed amply long enough to allow for the latency period associated with many asbestos-related claims. Indeed, many experts agree that the manifestation of an injury from the time of exposure to asbestos is normally 20 to 40 years, especially with regard to asbestos-related malignancies such as mesothelioma and lung cancer. The proposed legislation, however, would effectively authorize asbestos claimants (and particularly their estates) to pursue litigation for asbestos exposures that occurred before 1951 *without limitation*. In other words, it is entirely plausible that asbestos plaintiffs could pursue litigation in Connecticut for alleged exposures and injuries dating back to the Great Depression.

Such an outcome clearly runs afoul of state public policy as previously established by the Connecticut legislature and confirmed by the state’s highest court. In addition to providing ample time to file asbestos claims, Connecticut’s current statute of repose serves important public policy objectives related to the integrity of the fact-finding process and fairness for defendants who should not be forced to litigate stale claims. *Baxter v. Sturm, Ruger and Co., Inc.* 644 A.2d 1297, 1300, 1301 (1994) (“statutes of repose...serve the important public policy of preventing the litigation of stale claims . . . and to ensure the reliability of the fact-finding process.”). Eliminating the 60-year statute of repose will inevitably force defendants to litigate more and more asbestos claims in Connecticut based on a dubious factual record of faded memories and missing documentary evidence – evidence that is vital towards confirming important occupational and exposure histories of any given asbestos claimant. The fact that many of those exposed in the 1930s and 1940s – and their co-workers -- are no longer

living, and therefore cannot be cross examined, also exacerbates the problem of access to meaningful evidence and the opportunity to contest such claims.

To be sure, Connecticut's current statute of repose maintains heightened importance because it protects non-culpable defendants from attenuated litigation. During the 1980s and early 1990s asbestos litigation focused on the actual producers of asbestos and asbestos-containing products. James S. Kakalik et al, *Variation in Asbestos Litigation Compensation and Expenses* (1984). Many of these defendants ultimately resolved their asbestos liabilities in the tort system by securing bankruptcy relief through the establishment of personal injury settlement trusts that have proliferated considerably over the past decade. Because of their bankrupt status, these debtor/defendants can no longer be sued in the tort system. As such, asbestos plaintiffs' lawyers have shifted their litigation tactics towards suing the next solvent defendant, many of whom had peripheral involvement with the manufacturing and sale of asbestos containing products. Passing H.B. 6341 will only accelerate this litigation against the next solvent bystander based on injuries that were likely caused by now-bankrupt defendants. *See* Mealey's Litig. Rep.: Asbestos, vol. 17:3, Mar. 1 2002 (describing asbestos litigation as an "endless search for a solvent bystander.").

H.B. 6341 upsets well-settled public policy regarding the litigation of stale claims in the Connecticut civil justice system. It also embodies an initiative that will invite more asbestos litigation in the state that is patently unfair to defendants who will be forced to defend these factually dubious cases without adequate access to evidence. Advancing such legislation will also signal a step in the wrong direction if the State of Connecticut wants to attract future job creators and improve its overall business climate. For the foregoing reasons, we urge the Judiciary Committee to reject H.B. 6341.